IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8050 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI BECHARBHAI PATEL

Versus

A M C

Appearance:

MR MC BHATT for Petitioner Nos. 1-2

MR DM BHATT for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

MR MAULIN R RAVAL for Respondent No. 1

MR RR MARSHALL for Respondent No. 2

Mr.Sonalben D. Vyas, Assistant GOVERNMENT PLEADER, for Respondent No. 3.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/10/2002

ORAL JUDGEMENT

Rule. Respective Advocates waive service of rule on behalf of the concerned respondents. With the consent of the parties, today, the matter is heard finally.

By filing this petition, the petitioners have challenged the impugned notice dated 7.6.1997, issued by the Ahmedabad Municipal Corporation under Section 68 of the Town Planning Act, read with Rule 33 of the Town Planning Rules. In the Town Planning Scheme, certain area is allotted to the petitioners and the area in the possession of the petitioners is required to be handed over to the Corporation for implementing the scheme and, therefore, the petitioners were served with the aforesaid notice, asking them to hand over the area, which is in their occupation. The grievance of the petitioners is that as per the T.P. Scheme, the petitioners are required to be given certain area of final plot No.104. It is argued by the petitioners that, on the one hand, the Corporation is not handing over the said areas to the petitioners, and on the other hand, it is asking the petitioners to hand over the area, which is in their possession. Mr.Munshaw, learned Advocate appearing for the Corporation, stated that so far as Final Plot No.104 is concerned, part of the same is already in possession of the present petitioners to the extent of about 60% and that, for handing over remaining part, the Corporation has already issued notices to the occupiers, asking them to hand over possession of the same so that the said area can be handed over to the present petitioners. Mr.Munshaw has fairly conceded that it is the statutory duty of the Corporation under the Act to implement the Scheme. On the basis of the instructions from one Mr.J.M. Kachia, Deputy Town Development Officer as well as Deputy Estate Manager of the Corporation, Mr.Munshaw submitted that the Corporation will make all attempts to see that the Scheme is implemented and the area, which is required to be handed over to the petitioners as per the T.P. Scheme, will be handed over to him after taking appropriate action against the occupiers and that latest by 31st March, 2002, the area in question will be handed over to the petitioners, which is required to be handed over to them as per the Scheme. He, however, submitted that at least the petitioners should hand over the area, which is in their possession, for implementing the Scheme as the said area is required to be utilised for public purpose. Mr.Bhatt for the petitioners has fairly submitted that the said area is kept vacant and, there is no encroachment in any manner in the aforesaid area and the petitioners will immediately hand over the possession simultaneously the moment the area is allotted to them by the Corporation, of which reference is made earlier.

Mr.Bhatt has also agreed before this Court that the petitioners will file undertaking that, in the meanwhile, the petitioners will not alienate or transfer the land in question, which is in their possession, and will hand over the possession, moment they receive the land from the Corporation. Under the aforesaid circumstances and considering the statement of Mr.Munshaw for the Ahmedabad Municipal Corporation, it is directed that the Corporation will implement the said Scheme by handing over the land latest by 31st March, 2003 without fail and at that stage, the petitioners will also hand over the possession, which is in their possession, simultaneously without creating any obstruction in this behalf.

The petition is accordingly partly allowed to the aforesaid extent. Rule is made absolute accordingly, with no order as to costs.

16th October, 2002 (P.B. Majmudar, J.)

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(apj)